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PAUL A. KEMPF, P.E.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY LLC,)
Plaintiff,)
vs.) Case Number:
VICTORY ENERGY OPERATIONS LLC,) 04-325
Defendant.)

The Deposition of PAUL A. KEMPF, P.E.

Date: Tuesday, November 1, 2005

Time: 1:37 p.m.

Place: Boveri, Murphy, Rice & LaDue
400 Plaza Building
210 South Michigan Street
South Bend, Indiana

Called as a witness by the Defendant in
accordance with the Federal Rules of Civil
Procedure and Rules of the United States
District Court for the Western District of
Pennsylvania, pursuant to Notice.

Before Melody M. Goodrich, CM
Notary Public, Cass County, Michigan

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1 APPEARANCES:

2
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6 Pittsburgh, Pennsylvania 15222-3001
7 On behalf of the Plaintiff;

8
9 MR. CHRISTOPHER T. SHEEAN
10 Wildman, Harrold, Allen & Dixon
11 225 West Wacker Drive
Chicago, Illinois 60606-1229
12 On behalf of the Defendant;

13
14 MR. WILLIAM P. HOYE
15 Associate Vice President and Deputy
General Counsel
16 University of Notre Dame
203 Main Building
Notre Dame, Indiana 46556-5602
17 On behalf of the Deponent.

18
19
20 ALSO PRESENT:
21 Sam Walsh, Videographer
22
23 * * *
24
25

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1 8 August 20, 2004 Letter from Attorney 90
2 Christopher T. Sheean
3 (Attorney Christopher T. Sheean retained the originals
of Deposition Exhibit Nos. 1 through 8.)
4
5 * * *

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		Page 9	Page 10	
1	Q	Can you --	1	customer's needs.
2	A	K-o-o-n-t-z --	2	Q And how long did you work for Koontz-Wagner?
3	Q	-- spell that.	3	A Nine years.
4	A	-- and Wagner is W-a-g-n-e-r.	4	Q What was your title when you left?
5	Q	And what was your job title for Koontz-Wagner?	5	A Manager of engineering in design.
6	A	I had various titles. I was like a salesman/design	6	Q Were your responsibilities as manager of
7		engineer and then manager of engineering for their	7	engineering in design any different than what
8		Custom Controls Division.	8	you've already told me?
9	Q	And what sort of products did the Custom Controls	9	A No, I don't believe not.
10		Division of Koontz and Wagner manufacture or sell?	10	Q Where did you go next for employment, after leaving
11	A	Produced electrical controls for a variety of	11	Koontz-Wagner in -- in or around 1989?
12		industries, the utility industry, process	12	A I went to the University of Notre Dame.
13		companies, air pollution control -- controls,	13	Q And was it in 1989?
14		things like that, railroad -- things for the	14	A Yes.
15		railroads, just about anything you can imagine.	15	Q Do you recall what month?
16	Q	And can you give me a sense of your job	16	A June.
17		responsibilities while you were employed at Koontz	17	Q And what position were you hired for?
18		and Wagner.	18	A Utilities electrical engineer.
19	A	I was an engineer in that department. So I was	19	Q What were your job responsibilities as utilities
20		involved a little bit in sales but primarily in the	20	electrical engineer?
21		engineering interface with the customers.	21	A I was responsible for the university's electrical
22		We had varying -- projects in varying degrees	22	distribution system and the various electrical
23		of design requirements. Some of them were fully	23	systems within the utility department, in
24		design, some of them were basically conceptual,	24	particular in the power plant.
25		that we were then left to design a system to meet a	25	Q Does Notre Dame have its own power plant?

		Page 11	Page 12	
1	A	Yes, we do.	1	Q And then the word "acting --
2	Q	Okay. And what is the primary source of power for	2	A "Acting" disappeared, yeah.
3		Notre Dame?	3	Q -- disappeared?
4	A	When you say "power," you mean --	4	One other rule, you have to wait until I finish
5	Q	Electrical energy.	5	my question before you answer.
6	A	We generate a portion, about 60 percent of our	6	A Sorry.
7		power, and we purchase the balance from a serving	7	Q It's difficult for our court reporter to take down
8		public utility.	8	both of us at the same time, as good as she is.
9	Q	What is the primary means of generating the	9	Q What are your responsibilities as director of
10		60 percent of power that Notre Dame uses?	10	utilities at Notre Dame?
11	A	Steam turbine-driven generators within the plant.	11	A It's overseeing the operation of the plant and all
12	Q	Okay. We'll come back to that.	12	the utility systems that distribute energy across
13		How long were you the utilities electrical	13	campus.
14		engineer for Notre Dame?	14	Q And is -- am I right that you continue in the role
15	A	Ten years.	15	of director of utilities at Notre Dame?
16	Q	Until --	16	A That is correct.
17	A	1999, fall of -- excuse me -- 1998. And in --	17	Q How many employees do you oversee?
18	Q	And in the fall of 1998, what position did you	18	A Approximately 50.
19		obtain?	19	Q And you said "the plant." Can you give me a better
20	A	Director -- I was made the acting director of	20	description of what you mean when you say "plant."
21		utilities.	21	A Our power plant generally consists of five boilers.
22	Q	And how long were you the acting director of	22	We have seven -- or, excuse me -- ten generators,
23		utilities?	23	five steam turbine generators, five diesel
24	A	I believe it was till about April the following	24	generators, and seven steam turbine-driven
25		year, 1999.	25	chillers.

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1	Q	Did he say why Victory would no longer be allowed to manufacture this boiler based on intellectual property if Indeck obtained the rights?	1	your -- to the best of your recollection?
2			2	A I think in their industry they all talk to one another.
3			3	
4	A	Not beyond just that.	4	Q But --
5	Q	Okay. What did you take from -- well, let me --	5	A It wasn't something we publicly released, no.
6		strike that.	6	Q Did you follow up with anyone within the university to inquire about this issue of the intellectual
7		First of all, you indicated a minute ago it's	7	property rights at risk?
8		not your standard practice to take down handwritten	8	
9		notes of telephonic conversations, correct?	9	A I don't recall that I did.
10	A	Correct.	10	Q How about anyone with Cummins & Barnard or any of
11	Q	What -- what prompted you to take these notes in	11	your outside vendors who were helping you with the
12		this instance?	12	procurement?
13	A	I think at this point we were getting so much bad news about every vendor, that if you called and talked to me, I wrote a note somewhere, and that day I happened to have one of these pads on my desk.	13	A I also don't recall doing that either.
14			14	Q Well, what, if anything, did you do with this
15			15	information once you had this conversation with
16			16	Mr. Cole, where he told you that if Indeck obtained
17			17	the rights, Victory would no longer be allowed to
18			18	manufacture boilers based on intellectual property?
19		I also think it was a little disconcerting to	19	A We shared it internally. I'm sure we shared it
20		hear some of this information, and if you really	20	with Cummins & Barnard. Although, there really
21		look at this, at this point I presume -- I should	21	wasn't anything that I recall asking them to do.
22		never presume -- Mr. Cole obviously was aware of	22	At this point in our evaluation, we were
23		who the short list were because he called me and	23	leaning towards English and NATCOM, and so if that
24		made a comment about each and every one of them,	24	was going to be the end decision, it really didn't
25		all of them in the negative.	25	matter to me.
	Q	And was that public knowledge, to the best of		

		Page 67	Page 68
1	So I think it was just something we -- plus,	1	would have asked our general counsel to look at
2	I -- a lot of these times I couldn't judge the	2	this. It's certainly not an issue I would have not
3	validity of what everyone was telling me because	3	asked for help on.
4	they were telling me a lot of terrible things.	4	Q Why, as of August 18, 2004, were you leaning more
5	If we had been to a point where we discussed	5	toward English Boiler than Victory or Rentech?
6	further with Victory a purchase, we would have	6	A Lower costs, higher efficiency, lower emissions.
7	certainly, in confidence, brought it up with them,	7	Every -- they basically met the criteria that we
8	but we never got to that point.	8	were looking for. They were the evaluated most
9	Q Were you concerned that if you went forward with	9	responsive/best bidder, however you want to call
10	Victory, you were going to be getting involved in	10	that.
11	some sort of a litigation matter?	11	Q Did you go back to Victory after the meeting in the
12	A I really didn't think about that, from the	12	first week of August and ask them if they could
13	standpoint that that wasn't our focus at that	13	lower the price or lower the emissions or raise the
14	point, where we were going to go. So I didn't have	14	efficiency of their boiler?
15	to think about it.	15	A No. We didn't do that with anyone.
16	Q Is it fair to say that Mr. Cole's comment raised	16	Q Do you know whether or not Victory Energy could
17	doubts in your mind about Victory Energy's	17	have lowered the price or raised the efficiency or
18	relationship with the intellectual property rights?	18	lowered the emissions?
19	A I guess what I would say is it was -- it was in	19	A I only can -- no, I don't know that.
20	conflict with what Victory had told us and that	20	Q The next sort of paragraph in your handwritten
21	they had a license agreement, that they were -- had	21	notes say, "Questions investment of Victory and
22	shared or were sharing with us at that -- at or	22	English to business. Suggests we be skeptical;" do
23	around that time.	23	you see that?
24	And, again, we didn't get to a point where we	24	A Yes.
25	were seriously looking at Victory, that then I	25	Q What did you think Mr. Cole meant by that?

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1	boilers at the time you made the decision not to	1	MR. GISLESON: Want to take a
2	select Victory Energy?	2	short break so the witness can
3	MR. GISLESON: Objection,	3	stretch his legs, perhaps get some
4	misleading, foundation, vague.	4	water and then, Chris, you can
5	BY MR. SHEEAN:	5	finish up with anything?
6	Q You can answer.	6	MR. SHEEAN: That's fine.
7	A Help me with that one.	7	MR. HOYE: That's a great idea.
8	I was aware of the situation as Jeff had laid	8	Thank you.
9	it out. I did not really go investigate to see if	9	VIDEOGRAPHER: We're off the
10	what he was telling me was true or not. And,	10	record. The time is 3:08 p.m.
11	again, I think, yes, I was aware, but it wasn't	11	(short recess taken.)
12	part of my decision process.	12	VIDEOGRAPHER: We're back on
13	Q Did you meet with anyone else from Indeck when you	13	the record. The time is 3:16 p.m.
14	were up at the plant in Montreal?	14	This is tape number 2 in the
15	A Basically one other gentleman who was the plant	15	deposition of Mr. Kempf.
16	manager. I'd have to dig back to find his name,	16	MR. GISLESON: Good --
17	but he was the guy who ran the facility.	17	MR. SHEEAN: Mr. Kempf, I just
18	Q And is that actually the Volcano plant in Montreal?	18	want to say I have no further
19	A I believe you are correct.	19	questions at this time.
20	Q And are those direct-fired package watertube	20	CROSS-EXAMINATION
21	boilers?	21	BY MR. GISLESON:
22	A I believe so. They made a variety of things there.	22	Q Good afternoon. We looked at Exhibit 1, which
23	MR. SHEEAN: I think I'm done.	23	included the instructions to bidders, as well as
24	Let me just go through my notes real	24	the bid specifications for the boiler number 6
25	quick.	25	project; is that right?

		Page 75	Page 76
1	A Correct.	1	was ultimately in charge of the process?
2	Q And if you could pick those up, if you don't mind.	2	A I presume so, yes.
3	Looking at page ND43, which is Section 20,	3	Q As the director of utilities, ultimately the
4	"Invitation For Bids," does this basically set	4	decision rested with you as to which boiler to
5	forth the ground rules for how the University of	5	select subject to the advice and opinions that you
6	Notre Dame was going to evaluate the bids that were	6	received from the other members of the team?
7	submitted by the different bidders?	7	A That is correct.
8	A Yes, it does.	8	Q Did VEO, Victory Energy Operations, have a right to
9	MR. SHEEAN: What's the page	9	a contract with the university for the watertube
10	number?	10	package boiler that was being bid as a result of
11	MR. GISLESON: ND43.	11	its having submitted a bid to the university?
12	MR. SHEEAN: Thank you.	12	A No.
13	BY MR. GISLESON:	13	Q And is that basically set forth on page ND43, under
14	Q Under due date, for April 29, 2004, it says that	14	the paragraph "Right to Reject: The purchaser
15	seven copies of the proposal shall be delivered to	15	reserves the right to reject any or all proposals
16	you; is that right?	16	received as a result of this request for proposal
17	A Yes.	17	or parts thereof or items therein. The purchaser
18	Q How many people were involved in the decision	18	reserves the right to enter into an agreement with
19	process for the boiler?	19	whomever it chooses, and the award may be to other
20	A Probably three to four people from our staff and	20	than the low bidder"?
21	I'm going to say a light number from Cummins &	21	A That is correct.
22	Barnard --	22	Q Did English obtain the contract for the watertube
23	Q As --	23	package boiler --
24	A -- had some involvement at some point.	24	A Yes.
25	Q As the director of utilities, were you the one who	25	Q -- on the merits?

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1	A	Yes.	1	A	I do.
2	Q	And when you were identifying lower cost, higher efficiency, and lower emissions, English submitted the proposal that was the best in terms of each of those features?	2	Q	Under alternate number 5, it has, "Furnish all welded tube construction in lieu of rolled construction;" do you see that?
3			3		
4			4		
5			5	A	Yes.
6	A	Yes.	6	Q	What's the difference, as you understand it, between all welded tube construction and rolled construction?
7	Q	Was it your opinion, based on the investigation you did, that the English boiler was in the best interest of the University of Notre Dame?	7		
8			8		
9			9	A	I think that's how the tubes are attached to the drum.
10	A	Yes.	10	Q	Is rolled construction different than all welded tube construction?
11	Q	And is that still your opinion?	11		
12	A	Yes.	12	A	Yes.
13	Q	If we look at Exhibit 2, which is the proposal that Victory Energy Operations submitted to the university, did you personally read the proposal cover to cover, page for page?	13	Q	Were there some bidders who submitted bids that utilized rolled construction instead of an all welded tube construction?
14			14		
15			15		
16			16		
17	A	I went through all these proposals in fairly decent detail. I won't swear to having read every word.	17	A	I believe there may have been.
18			18	Q	You were asked some questions about welded-wall construction.
19	Q	Was the bid that Victory submitted higher in terms of dollars, a higher cost --	19		
20			20		
21	A	Yes.	21		
22	Q	-- than the English proposal?	22		
23	A	Yes.	23	Q	Correct.
24	Q	On page ND212, they have a series of mandatory alternates; do you see that?	24	A	I think parts of their boilers may not have been a hundred percent membrane construction.
25			25		

		Page 79	Page 80		
1	Q	Are you familiar with the concept of a tangent-tube construction in watertube boilers?	1	A	All I really was aware of is that they had -- as they had told us, that they held a license to use the Erie design.
2			2		
3	A	I've heard it, but I won't claim to fully understand it.	3		
4			4	BY MR. GISLESON:	
5	Q	Do you know whether any of the boilers currently in use at the university have a tangent-tube design?	5	Q	When did Victory first tell the university that it held a license to use the Keystone design?
6			6		
7	A	You know, I'm not certain of that.	7	A	Without reading the proposal, to see if they said it here, I know for certain it was made aware to us when we had the interview process. I may have known it before then, but I'm not certain.
8	Q	Are there any of the boilers currently in use at the university that do not have an all-membrane design?	8		
9			9		
10	A	I actually think all of them are not all-membrane design.	10		
11	Q	And those boilers are still performing adequately for the university?	11	Q	During the interview that occurred in August 2004, did you ask any specific questions as to the role, if any, that Erie Power Technologies would have if Victory was awarded a contract for boiler number 6?
12			12		
13	A	Yes.	13	A	I believe we asked some questions directly to the gentleman from Erie.
14	Q	And the university is able to utilize those boilers to generate steam, even though they do not have an all welded wall design?	14	Q	Bob Gdaniec?
15			15	A	Yes.
16			16	Q	What did Mr. Gdaniec say?
17			17	A	I think it was basically to explain, my recollection, that Erie had a collection of designs and all the design work it had done for an "O" type design and then what they did was helping the licensees in tailoring, for lack of a better word, the specific design into an "O" design. So they
18			18		
19	A	Correct.	19		
20	Q	From reviewing this initial proposal that Victory submitted to the university in May 2004, were you able to determine whether Victory owned the technology that was the subject of its proposed Keystone boiler?	20		
21			21		
22			22		
23			23		
24			24		
25		MR. SHEEAN: Objection, vague.	25		

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1	were a part of that engineering process.	1 this says "O" type boiler specifications and then a
2	I know he discussed that, you know, they	2 general description of the Keystone design.
3	obviously didn't fabricate anything or manufacture	3 Did you agree, generally speaking, with the
4	anything. That was all stuff that Victory would	4 description of the benefits that are identified on
5	have done.	5 this page for the Keystone design?
6	Q You said that the "O" design was a well-known,	6 A I generally took the benefits, as people gave them
7	long-term design with a long history. Are you	7 to us, at their word. I wouldn't say I researched
8	referring to the Keystone?	8 them to any great length.
9	A Yes.	9 Q Turning to page ND276, which is the first page of a
10	Q Is one of the boilers that the university currently	10 "Victory Energy Keystone Steam-Generating Systems"
11	has a boiler that was manufactured by Erie City	11 brochure, do you recall whether you read the
12	Ironworks?	12 brochure that Victory submitted?
13	A I believe it is. I think our number 1 boiler is an	13 A I don't recall reading that. It's -- when I had
14	Erie City "O" -- "O" type boiler.	14 six or seven of these to read, it's very likely I
15	Q And has that performed well for the university over	15 didn't read that in any great detail.
16	time?	16 Q Looking at page ND283, under "Keystone Wall
17	A Yes, it has.	17 Construction," it says, "Victory Energy's design,
18	Q Have you developed an understanding that the	18 engineering, and manufacturing advances offer a
19	Keystone name is well known in the industry for "O"	19 complete range of wall construction technology."
20	type boilers?	20 During the meeting in August 2004 at Notre
21	A It was presented to us that way, yes.	21 Dame, did Victory identify any advances that it had
22	Q Presented to you by whom?	22 developed in the design, engineering, and
23	A By Victory.	23 manufacturing of watertube boilers or
24	Q Looking at the Victory proposal, at page ND220,	24 wall-construction technology for watertube
25	which is a page that you looked at with Mr. Sheean,	25 boilers?

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1	A I don't --	1 never designed and manufactured a boiler above a
2	MR. SHEEAN: Objection, vague.	2 hundred thousand pounds per hour as of the time
3	A I don't specifically recall.	3 that it submitted the proposal to the university?
4	BY MR. GISLESON:	4 A I wouldn't say it was a surprise, but it was
5	Q Turning to page ND292, which is a list of package	5 certainly a point of concern.
6	boilers, selected references, did Victory make any	6 Q Why was it a point of concern?
7	representations to you or, to your knowledge,	7 A One of our early issues was to try to find a
8	anyone else associated with this project, as to	8 manufacturer that had experience in the boiler we
9	which of these boilers Victory itself had been	9 were -- were trying to buy, both in size and type.
10	involved in the manufacture?	10 Q Had you heard of horror experiences in the industry
11	A No, I don't believe so.	11 of a manufacturer who got in over its head?
12	Q Was it your belief, from seeing a list of	12 MR. SHEEAN: Objection, vague.
13	references supplied by Victory, that Victory itself	13 A I don't know that we heard of them in quite that
14	had been involved with the design and manufacture	14 context. We heard a lot of different things but
15	of those boilers?	15 not so much that they got in over their head. I
16	MR. SHEEAN: I'm going to	16 think that was just a concern of our own.
17	object to the extent it	17 In reality, we found out that there was a lot
18	mischaracterizes prior testimony,	18 of people that didn't have a lot of experience.
19	but you can answer.	19 BY MR. GISLESON:
20	A I don't recall at what point but I -- I do recall	20 Q The university ultimately decided that it wanted a
21	that at some point there was a realization on my	21 NATCOM burner in the boiler it ultimately selected;
22	part that possibly they hadn't actually	22 is that right?
23	manufactured all of these.	23 A Yes.
24	BY MR. GISLESON:	24 Q What was it about the NATCOM burner?
25	Q Did it come as a surprise to you that Victory had	25 A They were able to guarantee lower NOx emissions on

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1	both natural gas and No. 2 fuel oil firing.	1 construction.
2	Q Did that become a condition, in the university's	2 Do you recall any of the three finalists
3	view, of any successful bidder, that it utilize a	3 identifying any shortcomings associated with all
4	NATCOM burner?	4 welded tube construction?
5	A We realized that their guarantees were	5 A We're moving, again, into an area that I'm not the
6	significantly lower than their competition, and we	6 expert on, but I think we may have started out this
7	felt that we needed that boiler to achieve the	7 process looking at welded tube and eventually
8	limits that we were having to propose to the state	8 ending back up with rolled tube, but I'd have to
9	or at least to get ourselves enough margin for our	9 verify that.
10	A We realized that their guarantees were	10 So there was some -- my recollection, at least,
11	significantly lower than their competition, and we	11 was there was contention amongst the manufacturers
12	felt that we needed that boiler to achieve the	12 as to what was better.
13	limits that we were having to propose to the state	13 Q It was still an open issue as to which was better,
14	or at least to get ourselves enough margin for our	14 rolled tube versus welded tube?
15	A We realized that their guarantees were	15 A Correct.
16	significantly lower than their competition, and we	16 Q You were asked questions about whether welded-wall
17	felt that we needed that boiler to achieve the	17 technology is proprietary to a certain
18	limits that we were having to propose to the state	18 manufacturer.
19	or at least to get ourselves enough margin for our	19 Did you ever get into an analysis at any point
20	A It was a factor, that we felt that NATCOM was our	20 during this process as to what technology was or
21	best opportunity to meet the compliance needs that	21 was not proprietary to a particular manufacturer?
22	we had.	22 A No.
23	Q In the July 21, 2004 letter from Cummins & Barred	23 Q Did you ever get to the point where you were
24	(sic), to Ed Hull of Power Systems, in which he	24 looking at detailed design drawings for the kind of
25	identified Victory Energy as one of the three	25 wall construction that was to be used, to determine

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1	whether a particular manufacturer considered its	1 overview of the company and general discussion of
2	specific design for wall technology to be	2 their boiler design."
3	proprietary?	3 Does that help in any way in identifying who on
4	A No.	4 behalf of Victory stated that although Victory has
5	I should correct. The only -- understand	5 not manufactured a boiler in the size required for
6	proprietary. There was that discussion about the	6 this project, however, they can easily scale up
7	"S" type boiler, but that didn't relate to, you	7 their "O" style design?
8	know, membrane-wall construction or the tube, and	8 A I can't say absolutely. I don't recall who said
9	that was generally accepted by all, that they had a	9 that.
10	patent. We didn't investigate it.	10 Q Do you have an understanding as to what was meant
11	Q Looking at Exhibit 5, which was the July 21, 2004	11 by the statement from the Victory representative
12	Cummins & Barnard letter, with the meeting minutes	12 that Victory can easily scale up their "O" style
13	attached to it, under the section for Victory	13 design?
14	Energy Operations, paragraph 3, which is at page	14 A I think I do.
15	ND333, it says, "As 'Victory Energy' they have not	15 Q And what's that understanding?
16	manufactured a boiler in the size required for this	16 A Just that it's -- it's the same as the smaller one,
17	project, however they can easily scale up their 'O'	17 only bigger, and that was --
18	style design for this project, utilizing a proven	18 Q They can use their existing technology, to which
19	Keystone design."	19 they have access, to design and manufacture a
20	Who was speaking from Victory on that point?	20 larger boiler?
21	A I -- I don't recall specifically who would have	21 A Correct.
22	said that.	22 Q Did anyone from Victory during that meeting
23	Q If we look at the previous page under "Victory	23 identify any limitations to their abilities or
24	Energy Discussion," it says, "Introductions were	24 technology to scale up their existing technology to
25	held and John Viskup of Victory provided an	25 design and manufacture a 180,000-pound per hour

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1	watertube boiler?	1 could be developed or obtained through the English
2	A I don't recall any.	2 boiler?
3	Q And if we look in the same meeting minutes on	3 A No.
4	paragraph 13, same page, ND333, it reads, "In	4 MR. GISLESON: Mark this as an
5	regards to supplying a NATCOM burner, Victory	5 exhibit, please.
6	stated that they cannot do this due to NATCOM's	6 (Deposition Exhibit 8 marked for
7	affiliation with Nebraska Boiler;" do you see that?	7 identification.)
8	A I do.	8 BY MR. GISLESON:
9	Q And did you understand that to be an unequivocal,	9 Q I'd like to show you what's been marked as
10	unconditional statement by Victory?	10 Exhibit 8, which is a two-page letter stamped ND355
11	MR. SHEEAN: Objection, vague.	11 to 356.
12	A Pretty much. I'd have to clarify that for you a	12 Do you recognize this as a true and correct
13	little bit but, yeah, pretty much.	13 copy of an August 20, 2004 letter, that you
14	BY MR. GISLESON:	14 received from Christopher T. Sheean of the Law Firm
15	Q Did they ever come back thereafter and say, hey, we	15 Kelley Drye & Warren?
16	changed our mind, we'll supply a NATCOM burner?	16 A I do.
17	A I think what happened ongoing is everybody was	17 Q Did you review the letter when you received it?
18	looking at also the other alternate. We didn't say	18 A I did.
19	we wanted a NATCOM burner. We said we wanted	19 Q Now, you mentioned before that you had had a
20	certain emission levels.	20 conversation with Jeff Cole on August 18, 2004,
21	Coen, for example, still had the opportunity to	21 concerning the license that Victory had; is that
22	meet that. So I'm sure Victory probably was still	22 correct?
23	working with them.	23 A Yes.
24	Q Did they ever come back and to your satisfaction	24 Q So that the letter you received from Mr. Sheean
25	demonstrate that they can exceed the emissions that	25 came after the conversation you had with Mr. Cole;

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1	is that right?	1 further investigation because at the point you had
2	A That is correct.	2 the conversation with Jeff Cole and then you
3	Q And Mr. Sheean writes, "This firm represents	3 received the letter from Victory's lawyer, the
4	Victory Energy Operations, and we've been asked to	4 university already planned to award the contract to
5	comment on the status of Victory Energy's license	5 English Boiler?"
6	agreement with Erie Power & Technology,	6 A That's a little overreaching. I think we were
7	Incorporated. Victory Energy's license should	7 intending to pursue negotiation with them, and
8	remain in place following the sale of EPTI's assets	8 Victory at that point was our back-up plan, for
9	for two reasons," and then he identifies two	9 lack of a better term.
10	reasons in his letter; do you see that?	10 Q And it was never necessary to pursue the back-up
11	A I do.	11 plan because you reached agreement with English
12	Q Now, after you received this letter, did you do any	12 Boiler?
13	follow-up investigation or research of any kind on	13 A That's correct.
14	this issue of whether Victory would retain the	14 Q Did you consider English Boiler to have
15	right to use the Keystone technology if the Erie	15 significantly less experience than Victory Energy
16	Power assets were sold?	16 Operations?
17	A I did not.	17 A No.
18	Q Did this letter satisfy any concerns you may have	18 Q Did you consider English Boiler to offer a product
19	had at the time?	19 with an inferior history in sales record to the
20	A It did for the reasons I stated earlier, that we	20 Victory product?
21	weren't necessarily pursuing a purchase from	21 A No.
22	Victory, but at that point it was something to put	22 Q Now, you were shown a Record of Conversation that
23	in the file, and if we had swung in that direction,	23 you had with Jeff Cole on August 18, 2004.
24	I'd have gone back to this issue.	24 Is it correct that during that conversation
25	Q From your perspective, there was no need to do any	25 Mr. Cole discussed with you not just the Victory

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1	proposal but also the Rentech proposal and the	1 face?
2	English Boiler proposal?	2 A Again, they weren't essential to the direction we
3	A That is correct.	3 were currently heading; and if we had headed
4	Q Based on your experience in dealing with the	4 another direction, I would have certainly taken
5	different manufacturers who were supplying	5 them with a different level of sincerity.
6	proposals to the university, were they all from	6 Q So you had the conversation, you put it in a file,
7	time to time commenting on the proposals submitted	7 but you moved on and just focused on the English
8	by their competitors?	8 boiler?
9	A Many of them were.	9 A Correct.
10	Q As a result of -- strike that.	10 Q And I believe you advised counsel for Victory that
11	And was it true that prior to the conversation	11 you don't recall which specific Indeck entity
12	on August 18, 2004, with Mr. Cole, you had had	12 employed Mr. Cole; is that right?
13	conversations with other manufacturers in which	13 A I don't. I know we have it in our records. I'd
14	they expressed their opinions concerning their	14 have to look it up for you.
15	competitors?	15 Q Do you know during that conversation who first
16	A Yes.	16 raised the issue of Indeck's acquisition of the
17	Q As a result of those experiences, was it your	17 Keystone assets, whether it was you or whether it
18	belief that you had to form your own independent	18 was Mr. Cole?
19	judgment as to anything you were told by one of the	19 A It was Mr. Cole. I had no reason to call him. So
20	manufacturers submitting a bid?	20 he called me, and those were the items he wished to
21	A It -- that's partially true. It's just that we had	21 discuss.
22	to validate their claims and not just take them at	22 Q Can you recall anything else that Mr. Cole said to
23	their face.	23 you during that conversation, other than what you
24	Q Did you take any of the claims that Mr. Cole made	24 wrote down in Exhibit 7?
25	during the August 18, 2004 conversation at their	25 A No.

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1	Q You said that not everyone could meet Notre Dame's	1 Q There is no one-size-fits-all in the industry?
2	desire for a hundred percent membrane construction.	2 A Correct.
3	Do you recall what alternatives were provided	3 Q And I think you said that the boiler that you
4	to the membrane construction?	4 wanted was not an off-the-shelf item?
5	A I'm trying to remember, but it seems like at least	5 A Correct.
6	one of the bidders had like a front wall refractory	6 Q What did you mean by that?
7	design, and they basically downplayed that as not	7 A That it's a customized product, that you don't
8	being as big an issue, and we certainly listened	8 order it by a part number and, you know, get -- you
9	and considered that.	9 know, here's the way it comes and you just decide
10	Q Any other alternatives that you recall?	10 that's what you want. It's not like buying a
11	A No, I don't.	11 furnace at home.
12	Q Approximately how many proposals did you receive?	12 MR. GISLESON: Those are the
13	A I believe we received six.	13 questions I have. Thank you.
14	Q From your review of those six proposals, did each	14 THE WITNESS: You're welcome.
15	of the manufacturers recommend a different design?	15 MR. SHEEAN: I just have a
16	MR. SHEEAN: Objection, vague.	16 couple of quick follow-up questions
17	A Talking about boiler type?	17 for you, Mr. Kempf.
18	BY MR. GISLESON:	18 REDIRECT EXAMINATION
19	Q Correct.	19 BY MR. SHEEAN:
20	A Mostly "D"s. I think one "O" and the "S."	20 Q You talked about the existing boilers that the
21	Q Was it clear to you that there were different	21 university currently has on line and the fact that
22	alternative approaches that the university could	22 some of those or many of those are not 100 percent
23	pursue for a boiler?	23 membrane wall, correct?
24	A Yes. We were aware of that even before we took	24 A Correct.
25	bids.	25 Q And the fact that those boilers are still in